

**IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF OKLAHOMA**

MICHAEL GILYARD,)	
)	
Plaintiff,)	
)	
v.)	No. CIV 14-558-JHP-SPS
)	No. CIV 15-125-JHP-SPS
DIANNA ELDRIDGE, et al.,)	
)	
Defendants.)	

OPINION AND ORDER

Plaintiff filed identical complaints in Case No. CIV 14-558-JHP-SPS and Case No. CIV 15-125-JHP-SPS. As discussed below, the second case must be dismissed as duplicative of the first case.

Case No. CIV 14-558-JHP-SPS

On December 23, 2014, Plaintiff, a pro se prisoner filed a civil rights complaint against four employees of Mack Alford Correctional Center, along with a motion to proceed *in forma pauperis* in Case No. CIV 14-558-JHP-SPS (Dkts. 1, 2). On December 24, 2014, the court granted the *in forma pauperis* motion and directed Plaintiff to pay within 20 days an initial partial filing fee of \$19.69 (Dkt. 4). Plaintiff did not pay the initial partial filing fee as directed, so on January 21, 2005, Case No. CIV 14-558-JHP-SPS was dismissed without prejudice (Dkt. 5).

On February 3, 2015, Plaintiff filed a motion for reconsideration of the dismissal, alleging he had not received the order granting his motion to proceed *in forma pauperis* (Dkt. 7). On June 2, 2015, Plaintiff's motion for reconsideration was granted, and Case No. 14-558-JHP-RAW was reopened (Dkt. 8). Plaintiff was directed to pay the initial partial filing fee by July 2, 2015 (Dkt. 8). The initial partial filing fee was paid on June 18, 2015, and on June 25, 2018, summonses were issued for the four MACC defendants: Dianna Eldridge, Law Library Supervisor; Tommy Sharp, Deputy Warden; Trent Bourland, Medical Officer;

and Cindy Lowe, Warden's Assistant (Dkts. 11-14). On July 17, 2015, the defendants filed a motion to dismiss Case No. 14-558-JHP-SPS, because it is a duplicate of Case No. 15-125-JHP-SPS.

Case No. 15-125-JHP-SPS

On March 30, 2015, while Plaintiff's motion for reconsideration was pending in Case No. 14-558-JHP-SPS, he filed a second civil rights action, a motion to proceed *in forma pauperis*, and a motion for appointment of counsel in Case No. 15-125-JHP-SPS (Dkts. 1-3). On April 1, 2015, Plaintiff was granted leave to proceed *in forma pauperis* in Case No. 15-125-JHP-SPS and was directed to pay an initial partial filing fee of \$8.42 (Dkt. 6). He paid the initial partial filing fee on April 15, 2015.

A review of the complaint in Case No. 15-125-JHP-SPS shows it is identical to the complaint in Case No. 14-558-JHP-SPS. The four defendants in Case No. 15-125-JHP-SPS were served with the complaint (Dkt. 13-16), and a special report was filed (Dkt. 23) with a motion to dismiss (Dkt. 24). Plaintiff has filed a motion for summary judgment (Dkt. 32) in this case, and the defendants have filed a motion to strike Plaintiff's motion (Dkt. 33).

Duplicate Civil Rights Action

It is clear from the court's review of both cases that the complaint in Case No. CIV 15-125-JHP-SPS is a duplicate of the complaint in Case No. CIV 14-558-JHP-SPS. In such circumstances, it is the policy of this court to close the case with the higher case number and proceed with the case with the lower case number.

ACCORDINGLY, Case No. CIV 15-125-JHP-SPS is DISMISSED, and all future filing shall be in Case No. CIV 14-558-JHP-SPS. The defendants' motion to dismiss in Case No. 14-558-JHP-SPS (Dkt. 16) is DENIED, and the defendants in Case No. 14-558-JHP-SPS are granted twenty days to respond to the complaint.

IT IS SO ORDERED this 28th day of March, 2016.


James H. Payne
United States District Judge
Eastern District of Oklahoma